

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SILVIA M. GUZMAN
Claimant

VS.

TYSON FRESH MEATS, INC.
Self-Insured Respondent

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Docket Nos. 256,621; 1,010,797;
1,002,635; 1,017,837

ORDER

Claimant requested review of the April 26, 2006 Award by Administrative Law Judge (ALJ) Pamela J. Fuller. The Board heard oral argument on July 11, 2006.

APPEARANCES

Stanley R. Ausemus, of Emporia, Kansas, appeared for the claimant. Wendel W. Wurst, of Garden City, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. In addition, the parties agreed that future medical benefits are no longer in dispute, as the Award provides for further medical treatment upon proper application. The parties also agreed that although there are 4 separately docketed claims, there is no need for the Board to issue 4 separate Orders. Rather, the parties agree that to the extent claimant has suffered injury arising out of and in the course of her employment with respondent, that injury occurred on December 23, 1999 and the entirety of her ongoing physical complaints are alleged to have been caused by that injury. Nonetheless, the nature and extent of her injury remains in dispute.

ISSUES

The ALJ awarded claimant a 10 percent permanent partial impairment to the body as a whole based on Dr. Brown's opinions which she concluded were "the most reliable".¹

The claimant requests review of the ALJ's Award asserting that Dr. Murati's opinions as to claimant's impairment of function were more persuasive than those expressed by Dr. Brown, the Court's independent medical examiner. Thus, the Award should be modified

¹ ALJ Award (Apr. 26, 2006) at 6.

to reflect a 22 percent permanent partial impairment to the whole body or an average of the impairment opinions, resulting in a 16 percent whole body permanent impairment.

Respondent argues claimant is entitled to no further benefits beyond the 10 percent permanent partial impairment which it has already paid.

The only issue to be addressed in this appeal is the nature and extent of claimant's permanent partial impairment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The Board finds that the ALJ's Award sets out findings of fact and conclusions of law that are detailed, accurate, and supported by the record. The Board further finds that it is not necessary to repeat those findings and conclusions in this order. Therefore, the Appeals Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein.

Distilled to its essence, there is no dispute that claimant sustained an injury to her left wrist on December 23, 1999. The controversy between the parties stems from the extent of that injury and whether her subsequent physical complaints are attributable to the December 23, 1999 accident.

Claimant maintains that she sustained an initial injury on December 23, 1999 when a piece of meat was thrown and hit her on her left hand and wrist. Claimant contends that "[a]s a result of the original injury, and as evidenced by the medical records, she had a natural progression of medical problems and pain into other parts of her body. Since she was having pain in her left side, the [c]laimant overcompensated with her right side, causing some of the same problems on her right side."²

Dr. Murati evaluated the claimant and diagnosed bilateral carpal tunnel syndrome, myofascial pain syndrome affecting the bilateral shoulder girdles, snapping flexor nodules of the left 2nd and 3rd digits, and snapping flexor nodules of the right 2nd and 4th digits, all of which he attributed to claimant's work-related injuries.³ He rated all of her complaints and rendered an opinion that she bore a total 22 percent whole body functional impairment.⁴

² Claimant's Brief at 2-3 (filed Jun. 6, 2006).

³ Stipulation (Dec. 21, 2005), (Dr. Murati's Apr. 16, 2002 Report at 2-3).

⁴ Made pursuant to the 4th edition of the *AMA Guides*. All ratings are to the 4th edition of the *guides* unless otherwise stated.

In contrast to this opinion are those expressed by Dr. Reiff Brown, the court appointed neutral examiner. Dr. Brown examined claimant on two separate occasions. On the first, which occurred on September 4, 2002, he reviewed her history and performed an examination. That examination revealed a normal and pain free cervical spine, some tenderness over the front of the left shoulder and into the upper trapezius, no trigger points, crepitus and normal range of motion in both shoulders and the left elbow. He noted that although she had been treated by other physicians for “multiple strains and muscle inflammation” in the shoulder area, “I have nothing upon which to base a diagnosis of a myofascial pain syndrome as trigger points are totally absent today.”⁵ He went on to rate her with a 7 percent permanent partial impairment of function of the left upper extremity as a result of the December 1999 injury.

Thereafter, Dr. Brown saw claimant again, this time as a result of her attorney’s request. This examination occurred on September 8, 2004. He noted her additional medical treatment from various physicians. His examination revealed no atrophy about the neck, shoulders or shoulder girdles. Claimant’s impingement signs in her shoulders were negative, he observed no muscle spasms or crepitus although her range of shoulder motion was slightly limited. Claimant’s grip strength was only slightly reduced with tenderness over both carpal tunnels in the wrists. There was no atrophy in the hands and any numbness was limited to nighttime and in the course of her work activities.

Dr. Brown went on to diagnose bilateral rotator cuff tendonitis with mild bilateral carpal tunnel syndrome, which he opined was related to work but not severe enough to warrant surgical treatment. Dr. Brown rated claimant’s permanent impairment at a total 10 percent whole body permanent partial impairment for both upper extremities and the shoulders. This includes 5 percent to each upper extremity for mild carpal tunnel and 4 percent to the shoulders for loss of range of motion.

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.⁶ “Burden of proof” means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record.”⁷

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. The trier of fact is

⁵ Stipulation (Dec. 21, 2005), (Dr. Brown’s Sept. 4, 2002 Report at 2).

⁶ K.S.A. 1999 Supp. 44-501(a).

⁷ K.S.A. 1999 Supp. 44-508(g).

not bound by medical evidence presented in the case and has a responsibility of making its own determination.⁸

The ALJ indicated that she was more persuaded by the opinions expressed by Dr. Brown rather than those of the other physicians who provided evidence in this case. Although there is a slight difference in the severity of the ratings as to the bilateral carpal tunnel and bilateral shoulder loss of range of motion, the basic difference between those physicians' opinions is that one (Murati) diagnosed and rated myofascial pain as well as a bilateral snapping flexor nodules while the other (Brown) did not find those conditions to be present during either of his examinations. And while other physicians who examined claimant may have appreciated the snapping flexor nodules in either of her hands, no one but Dr. Murati diagnosed myofascial pain.

After considering the entire record, particularly the medical reports of Drs. Murati and Brown, the Board finds the ALJ's Award is well reasoned and should be affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Pamela J. Fuller dated April 26, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
Wendel W. Wurst, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁸ *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212 (1991).